

**IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA

v.

MICHAEL RAFEAL BERKLEY

Case No. 3:22-CR-101

MOTION TO CONTINUE EVIDENTIARY HEARING

The United States of America, through its attorneys, Jessica D. Aber, United States Attorney, and Thomas A. Garnett, Assistant United States Attorneys, respectfully seeks an order from the Court continuing the evidentiary hearing in this case in order to allow the two witnesses to comply with their religious obligations. That hearing is currently scheduled for June 27, 2023; the United States seeks a continuance of at least one week.

Background

On June 5, 2023, the Court entered an Order setting forth a schedule for an evidentiary hearing and subsequent pre-trial motions practice. Dk. No. 135. The Court determined that an evidentiary hearing would be required to resolve the parties' disputes regarding the provenance of certain records that the United States obtained from an online check writing company—Online Check Writer—in the course of the government's investigation.

The United States anticipates calling two witnesses during this hearing, both employees of Online Check Writer ("OCW"). The defendant has indicated that he likewise only seeks to examine the testimony of those same two witnesses. Dk. No. 142. The OCW witnesses' testimony will address, *inter alia*, the nature of certain OCW records; the witnesses' interaction with government employees; and the witnesses' personal interactions with the defendant.

Following the entry of the Court's June 5th Order, the United States subpoenaed the two OCW witnesses to appear at the June 27 evidentiary hearing. The witnesses accepted service and indicated that they were prepared to comply with the subpoena's requirements.

On the afternoon of June 17, company counsel for OCW emailed the undersigned to request (on behalf of both OCW witnesses) a continuance of the evidentiary hearing. Company counsel explained that the OCW witnesses had learned during Friday prayers on June 16 that the scheduled date of the evidentiary hearing would coincide with Eid Al-Adha, one of the most revered religious festivals observed by Muslims worldwide. Company counsel further explained that Eid Al-Adha spans three days, with the first and most festive day tentatively falling on June 27, 2023, according to the Islamic lunar calendar. Both OCW witnesses are devout Muslims, and as such, company counsel related, those individuals actively engage in the Eid Al-Adha celebrations, which include obligatory prayer congregations on the first day of Eid Al-Adha, the sacrificial offering of animals, the distribution of meat to those in need, and the sharing of joyous moments with family and loved ones. Company counsel relayed that it was of the utmost importance to the two OCW witnesses that they be present with their families during these religious observations.¹

The undersigned understood that any continuance would be complicated by one of the OCW witnesses' upcoming travel to India (counsel understands that this witness is scheduled to depart the United States on July 1). The undersigned asked OCW company counsel whether that witness would be able to postpone that trip to India by a week or two such that the evidentiary hearing (if the Court decided to grant a continuance) could take place shortly after the originally scheduled hearing date. Company counsel explained that the OCW witness in question would be

¹ Company counsel also relayed that OCW had identified an alternate OCW witness if witness substitution would be possible; the undersigned explained that the nature of these two OCW witnesses' testimony precluded witness substitution.

willing to make arrangements to travel and testify during the first or second week of July, and also that given the circumstances, the OCW witness would be willing, if necessary, to postpone the trip entirely.²

The United States accordingly requests a continuance of at least one week to allow the witnesses to comply with their religious obligations.

Conclusion

For the reasons discussed above, the United States respectfully requests a continuance of at least one week of the currently scheduled evidentiary hearing.

Respectfully submitted,

JESSICA D. ABER
UNITED STATES ATTORNEY

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² Counsel for the United States understands that the other OCW witness remains available through the summer months.

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2023, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send an electronic copy to all counsel of record in this matter.

I further certify that on June 20, 2023, a copy of the foregoing was mailed, via First Class Mail, to the defendant at the following address:

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By: /s/
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